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10 **BEFORE THE**  
**RESPIRATORY CARE BOARD OF CALIFORNIA**  
11 **DEPARTMENT OF CONSUMER AFFAIRS**  
12 **STATE OF CALIFORNIA**

13 In the Matter of the Accusation and Petition to  
Revoke Probation Against:

14 MARGARET E. JONES, R.C.P.  
P.O. Box 6074  
15 Crestline, CA 92325

16 Respiratory Care Practitioner License No. 2386,  
17 Respondent.

Case Nos. R-2053 and D1-2006-245

OAH No.

**ACCUSATION AND PETITION TO  
REVOKE PROBATION**

18  
19 Complainant alleges:

20 **PARTIES**

21 1. Stephanie Nunez (Complainant) brings this Accusation and Petition to  
22 Revoke Probation solely in her official capacity as the Executive Officer of the Respiratory Care  
23 Board of California (Board), Department of Consumer Affairs.

24 2. On or about May 17, 1985, the Board issued Respiratory Care Practitioner  
25 License Number 2386 to MARGARET ELIZABETH JONES (Respondent). The Respiratory  
26 Care Practitioner License was in full force and effect at all times relevant to the charges brought  
27 herein and will expire on June 30, 2009, unless renewed.

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3. In a previous disciplinary action entitled “In the Matter of the Accusation Against MARGARET E. JONES,” Case No. R-2053, the Board issued a decision and order, effective October 12, 2007, in which Respondent’s Respiratory Care Practitioner License Number 2386 was revoked. However, the revocation was stayed and Respondent’s license was placed on probation for a period of three (3) years with certain terms and conditions. A true copy of that decision is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

## JURISDICTION

4. This Accusation and Petition to Revoke Probation is brought under the authority of the following laws and under the disciplinary order issued “In the Matter of the Accusation Against MARGARET E. JONES,” Case No. R-2053. All section references are to the Business and Professions Code unless otherwise indicated.

5. Section 3710 of the Code states, in pertinent part, that “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3718 of the Code states: “The board shall issue, deny, suspend, and revoke licenses to practice respiratory care as provided in this chapter.”

## COST RECOVERY

7. Section 3753.5, subdivision (a) of the Code states:

“In any order issued in resolution of a disciplinary proceeding before the board, the board or the administrative law judge may direct any practitioner or applicant found to have committed a violation or violations of law to pay to the board a sum not to exceed the costs of the investigation and prosecution of the case.”

8. Section 3753.7 of the Code states:

“For purposes of the Respiratory Care Practice Act, costs of prosecution shall include attorney general or other prosecuting attorney fees, expert witness fees, and other administrative, filing, and service fees.”

1           9.       Section 3753.1 of the Code states:

2           “(a) An administrative disciplinary decision imposing terms of probation  
3       may include, among other things, a requirement that the licensee-probationer pay  
4       the monetary costs associated with monitoring the probation.

5           “...”

6                               **FIRST CAUSE TO REVOKE PROBATION**

7                               **(Failure to Comply with Biological Fluid Testing Requirements)**

8           10.       At all times after the effective date of Respondent’s probation in Case No.  
9       R-2053, Condition 3 stated:

10                   “3. BIOLOGICAL FLUID TESTING Respondent, at her expense, shall  
11       participate in random testing, including, but not limited to, biological fluid testing (i.e. urine,  
12       blood, saliva), breathalyzer, hair follicle testing, or a drug screening program approved by the  
13       Board. Test costs range from \$21.00 to \$200.00 each. The length of time shall be for the entire  
14       probation period. The frequency and location of testing will be determined by the Board.

15                   “At all times, Respondent shall fully cooperate with the Board or any of its  
16       representatives, and shall, when directed, appear for testing as requested, and submit to such tests  
17       and samples for the detection of alcohol, narcotics, hypnotics, dangerous drugs or other  
18       controlled substances.

19                   “If Respondent is unable to provide a specimen in a reasonable amount of time  
20       from the request, while at the work site, Respondent understands that any Board representative  
21       may request from the supervisor, manager or director on duty to observe Respondent in a manner  
22       that does not interrupt or jeopardize patient care in any manner, until such time Respondent  
23       provides a specimen acceptable to the Board.

24                   “Failure to submit to testing or appear as requested by any Board representative  
25       for testing, as directed, shall constitute a violation of probation, and shall result in the filing of an  
26       accusation and/or a petition to revoke probation against Respondent's respiratory care practitioner  
27       license.”

28           11.       Respondent’s probation in Case No. R-2053 is subject to revocation

1 because she failed to comply with Probation Condition 3, referenced above, in that she failed to  
2 comply with biological fluid testing requirements. The circumstances are set forth below:

3 a. On or about October 6, 2008, Respondent failed to provide, as  
4 directed, a biological fluid specimen, pursuant to Condition 3 of her probation.

5 b. On or about October 21, 2008, Respondent failed to provide, as  
6 directed, a biological fluid specimen, pursuant to Condition 3 of her probation.

7 c. On or about November 3, 2008, Respondent failed to provide, as  
8 directed, a biological fluid specimen, pursuant to Condition 3 of her probation.

9 d. On or about November 12, 2008, Respondent failed to provide, as  
10 directed, a biological fluid specimen, pursuant to Condition 3 of her probation.

11 e. On or about January 6, 2009, Respondent failed to provide, as  
12 directed, a biological fluid specimen, pursuant to Condition 3 of her probation.

13 f. On or about October 7, 2008, through October 13, 2008,  
14 Respondent failed to call the Board's drug and alcohol testing provider, pursuant to Condition 3  
15 of her probation.

16 g. On or about October 22, 2008, through January 22, 2009,  
17 Respondent failed to call the Board's drug and alcohol testing provider, pursuant to Condition 3  
18 of her probation.

19 **SECOND CAUSE TO REVOKE PROBATION**

20 **(Failure to File Quarterly Reports)**

21 12. At all times after the effective date of Respondent's probation in Case No.  
22 R-2053, Condition 7 stated:

23 "7. QUARTERLY REPORTS Respondent shall file quarterly reports of  
24 compliance under penalty of perjury, on forms to be provided to the probation monitor assigned  
25 by the Board. Omission or falsification in any manner of any information on these reports shall  
26 constitute a violation of probation, and shall result in the filing of an accusation and/or a petition  
27 to revoke probation against Respondent's respiratory care practitioner license.

28 "Quarterly report forms will be provided by the Board. Respondent is responsible

1 for contacting the Board to obtain additional forms if needed. Quarterly reports are due for each  
2 28 year of probation and the entire length of probation as follows:

3 “For the period covering January 1<sup>st</sup> through March 31<sup>st</sup> reports are to be  
4 completed and submitted between April 1<sup>st</sup> and April 7<sup>th</sup>. For the period covering April 1<sup>st</sup>  
5 through June 30<sup>th</sup>, reports are to be completed and submitted between July 1<sup>st</sup> and July 7<sup>th</sup>. For  
6 the period covering July 1<sup>st</sup> through September 30<sup>th</sup>, reports are to be completed and submitted  
7 between October 1<sup>st</sup> and October 7<sup>th</sup>. For the period covering October 1<sup>st</sup> through December 31<sup>st</sup>,  
8 reports are to be completed and submitted between January 1<sup>st</sup> and January 7<sup>th</sup>.

9 “Failure to submit complete and timely reports shall constitute a violation of  
10 probation.”

11 13. Respondent’s probation in Case No. R-2053 is subject to revocation  
12 because she failed to comply with Probation Condition 7, referenced above, in that she failed to  
13 timely file quarterly reports. The circumstances are set forth below:

14 a. On or about October 7, 2008, Respondent failed to provide, as  
15 required, a quarterly report for the period of July 1, 2008 through September 30, 2008, pursuant  
16 to Condition 7 of her probation.

17 b. On or about January 7, 2009, Respondent failed to provide, as  
18 required, a quarterly report for the period of October 1, 2008 through December 31, 2008,  
19 pursuant to Condition 7 of her probation.

### 20 **THIRD CAUSE TO REVOKE PROBATION**

#### 21 **(Failure to Pay Probation Monitoring Costs)**

22 14. At all times after the effective date of Respondent’s probation in Case No.  
23 R-2053, Condition 9 stated:

24 “9. PROBATION MONITORING COSTS All costs incurred for probation  
25 monitoring during the entire probation shall be paid by the Respondent. The monthly cost may  
26 be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms  
27 and conditions may also cause this amount to be increased.

28 “All payments for costs are to be sent directly to the Respiratory Care Board and

1 must be received by the date(s) specified. (Periods of tolling will not toll the probation  
2 monitoring costs incurred.)

3 “If Respondent is unable to submit costs for any month, she shall be required  
4 instead to submit an explanation of why she is unable to submit the costs, and the date(s) she will  
5 be able to submit the costs including payment amount(s). Supporting documentation and  
6 evidence of why the Respondent is unable to make such payment(s) must accompany this  
7 submission.

8 “Respondent understands that failure to submit costs timely is a violation of  
9 probation, and submission of evidence demonstrating financial hardship does not preclude the  
10 Board from pursuing further disciplinary action. However, Respondent understands providing  
11 evidence and supporting documentation of financial hardship may delay further disciplinary  
12 action.

13 “In addition to any other disciplinary action taken by the Board, an unrestricted  
14 license will not be issued at the end of the probationary period, and the respiratory care  
15 practitioner license will not be renewed, until such time all probation monitoring costs have been  
16 paid.

17 “The filing of bankruptcy by Respondent shall not relieve the Respondent of her  
18 responsibility to reimburse the Board for costs incurred.”

19 15. Respondent’s probation in Case No. R-2053 is subject to revocation  
20 because she failed to comply with Probation Condition 9, referenced above, in that she failed to  
21 pay probation monitoring costs. The circumstances are set forth below:

22 a. As of January 2009, Respondent has failed to pay a total of  
23 \$400.00 in probation monitoring costs, pursuant to Condition 9 of her probation.

24 **FOURTH CAUSE TO REVOKE PROBATION**

25 **(Failure to Comply with Cost Recovery Requirement)**

26 16. At all times after the effective date of Respondent’s probation in Case No.  
27 R-2053, Condition 13 stated:

28 “13. COST RECOVERY Respondent shall pay to the Board a sum not to

1 exceed the costs of the investigation and prosecution of this case. That sum shall be \$1,313.00  
2 and shall be paid in full directly to the Board, in equal quarterly payments, within 12 months  
3 from the effective date of this decision. Cost recovery will not be tolled.

4 “If Respondent is unable to submit costs timely, she shall be required instead to  
5 submit an explanation of why she is unable to submit these costs in part or in entirety, and the  
6 date(s) she will be able to submit the costs including payment amount(s). Supporting  
7 documentation and evidence of why the Respondent is unable to make such payment(s) must  
8 accompany this submission.

9 “Respondent understands that failure to submit costs timely is a violation of  
10 probation, and submission of evidence demonstrating financial hardship does not preclude the  
11 Board from pursuing further disciplinary action. However, Respondent understands that  
12 providing evidence and supporting documentation of financial hardship may delay further  
13 disciplinary action.

14 “Consideration to financial hardship will not be given should Respondent violate  
15 this term and condition, unless an unexpected AND unavoidable hardship is established from the  
16 date of this order to the date payment(s) is due.

17 “The filing of bankruptcy by the Respondent shall not relieve the Respondent of  
18 her responsibility to reimburse the Board for these costs.”

19 17. Respondent’s probation in Case No. R-2053 is subject to revocation  
20 because she failed to comply with Probation Condition 13, referenced above, in that she failed to  
21 comply with cost recovery requirements. The circumstances are set forth below:

22 a. On or about October 12, 2008, Respondent failed to pay \$328.85 in  
23 cost recovery, pursuant to Condition 13 of her probation.

24 **FIFTH CAUSE TO REVOKE PROBATION**

25 **(Violation of Probation)**

26 18. At all times after the effective date of Respondent’s probation in Case No.  
27 R-2053, Condition 16 stated:

28 “16. VIOLATION OF PROBATION If Respondent violates any term of the

probation in any respect, the Board, after giving Respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against Respondent during probation, the Board shall have continuing jurisdiction, and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against Respondent.”

19. Respondent's probation in Case No. R-2053 is subject to revocation because she failed to comply with Probation Condition 16, referenced above, in that she violated the terms of probation as more particularly described in paragraphs 11, 13, 15, and 17 above, which are hereby incorporated by reference and realleged as if fully set forth herein.

## DISCIPLINE CONSIDERATIONS

20. To determine the degree of discipline, if any, to be imposed on Respondent, Complainant alleges that on or about October 12, 2007, in a prior disciplinary action entitled "In the Matter of the Accusation Against MARGARET E. JONES," Case No. R-2053, Respondent's Respiratory Care Practitioner License was revoked, with the revocation stayed, and she was placed on three years probation on various terms and conditions. A true and correct copy of that decision, which is now final, is attached hereto as Exhibit A and incorporated by reference as if fully set forth herein.

## PRAYER

**WHEREFORE**, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Board issue a decision:

1. Revoking probation and carrying out the discipline that was stayed in Case No. R-2053 revoking Respiratory Care Practitioner License Number 2386 issued to Margaret E. Jones;

2. Revoking or suspending Respiratory Care Practitioner License Number 2386 issued to Margaret E. Jones;

3. Directing Margaret E. Jones to pay the Respiratory Care Board of California the costs of the investigation and enforcement of cases R-2053 and D1-2006-245, and



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if placed on probation, the costs of probation monitoring; and

4. Taking such other and further action as deemed necessary and proper.

DATED: January 22, 2009

Original signed by: \_\_\_\_\_  
STEPHANIE NUNEZ  
Executive Officer  
Respiratory Care Board of California  
State of California  
Complainant